

Internal Revenue bulletin

Bulletin No. 2002-10
March 11, 2002

HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

SPECIAL ANNOUNCEMENT

Announcement 2002-18, page 621.

The IRS will not assert that any taxpayer has understated his federal tax liability by reason of the receipt or personal use of frequent flyer miles or other in-kind promotional benefits attributable to the taxpayer's business or official travel. Any future guidance on the taxability of these benefits will be applied prospectively. The relief provided by this announcement does not apply to travel or other promotional benefits that are converted to cash, to compensation that is paid in the form of travel or other promotional benefits, or in other circumstances where these benefits are used for tax avoidance purposes.

INCOME TAX

Rev. Rul. 2002-9, page 614.

Impact fees. This ruling provides that impact fees incurred by a taxpayer in connection with the construction of a new residential rental building are capitalized costs allocable to the building. Rev. Proc. 2002-9 modified and amplified.

Rev. Rul. 2002-10, page 616.

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 1274, 1288, and other sections of the Code, tables set forth the rates for March 2002.

Rev. Rul. 2002-11, page 608.

Election in respect of losses attributable to a disaster. This ruling lists the areas declared by the President to qualify as major disaster or emergency areas during 2001 under the Disaster Relief and Emergency Assistance Act.

Notice 2002-19, page 619.

The "differential earnings rate" under section 809 of the Code is tentatively determined for 2001 together with the "recomputed differential earnings rate" for 2000.

EXEMPT ORGANIZATIONS

Announcement 2002-25, page 621.

A list is provided of organizations now classified as private foundations.

Actions Relating to Court Decisions is on the page following the Introduction.
Finding Lists begin on page ii.



Department of the Treasury
Internal Revenue Service

The IRS Mission

Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by

applying the tax law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents are consolidated semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered,

and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.

This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The first Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the first Bulletin of the succeeding semiannual period, respectively.

The contents of this publication are not copyrighted and may be reprinted freely. A citation of the Internal Revenue Bulletin as the source would be appropriate.

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Actions Relating to Decisions of the Tax Court

It is the policy of the Internal Revenue Service to announce at an early date whether it will follow the holdings in certain cases. An Action on Decision is the document making such an announcement. An Action on Decision will be issued at the discretion of the Service only on unappealed issues decided adverse to the government. Generally, an Action on Decision is issued where its guidance would be helpful to Service personnel working with the same or similar issues. Unlike a Treasury Regulation or a Revenue Ruling, an Action on Decision is not an affirmative statement of Service position. It is not intended to serve as public guidance and may not be cited as precedent.

Actions on Decisions shall be relied upon within the Service only as conclusions applying the law to the facts in the particular case at the time the Action on Decision was issued. Caution should be exercised in extending the recommendation of the Action on Decision to similar cases where the facts are different. Moreover, the recommendation in the Action on Decision may be superseded by new legislation, regulations, rulings, cases, or Actions on Decisions.

Prior to 1991, the Service published acquiescence or nonacquiescence only in certain regular Tax Court opinions. The Service has expanded its acquiescence program to include other civil tax cases where guidance is determined to be helpful. Accordingly, the Service now may acquiesce or nonacquiesce in the holdings of memorandum Tax Court opinions, as well as those of the United States District Courts, Claims Court, and Circuit Courts of Appeal. Regardless of the court deciding the case, the recommendation of any Action on Decision will be published in the Internal Revenue Bulletin.

The recommendation in every Action on Decision will be summarized as acquiescence, acquiescence in result only, or nonacquiescence. Both “acquiescence” and “acquiescence in result only” mean that the Service accepts the holding of the court in a case and that the Service will follow it in disposing of cases with the same controlling facts. However, “acquiescence” indicates neither approval nor disapproval of the reasons assigned by the court for its conclusions; whereas, “acquiescence in result only” indicates disagreement or concern with some or all of those reasons. “Nonacquiescence” sig-

nifies that, although no further review was sought, the Service does not agree with the holding of the court and, generally, will not follow the decision in disposing of cases involving other taxpayers. In reference to an opinion of a circuit court of appeals, a “nonacquiescence” indicates that the Service will not follow the holding on a nationwide basis. However, the Service will recognize the precedential impact of the opinion on cases arising within the venue of the deciding circuit.

The Actions on Decisions published in the weekly Internal Revenue Bulletin are consolidated semiannually and appear in the first Bulletin for July and the Cumulative Bulletin for the first half of the year. A semiannual consolidation also appears in the first Bulletin for the following January and in the Cumulative Bulletin for the last half of the year.

The Commissioner ACQUIESCES in result, as modified, only in the following decision:

Paul Pekar v. Commissioner,¹
113 T.C. 158 (1999)
T.C. Dkt. No. 15289-97

¹ Acquiescence in result, as modified, only relating to whether the late filing addition to tax under I.R.C. section 6651(a)(1) applies to a return received by the Internal Revenue Service after its prescribed filing date, when the return was mailed in an envelope bearing an official postmark of a foreign country showing the return had been mailed on the date it was due.

Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

Section 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 2002. See Rev. Rul. 2002-10, page 616.

If impact fees incurred by a taxpayer in connection with the new construction or expansion of a qualified low-income building are capitalized costs allocable to the building, are these fees included in the eligible basis of the qualified low-income building for purposes of § 42 of the Internal Revenue Code? See Rev. Rul. 2002-9, page 614.

Section 165.—Losses

26 CFR 1.165-11: Election in respect of losses attributable to a disaster.

Election in respect to losses attributable to a disaster. This ruling lists the areas declared by the President to qualify as major disaster or emergency areas during 2001 under the Disaster Relief and Emergency Assistance Act.

Rev. Rul. 2002-11

Under § 165(i) of the Internal Revenue Code, if a taxpayer suffers a loss attributable to a disaster occurring in an area subsequently determined by the President of the United States to warrant assistance by the Federal Government under the

Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5204c (1988 & Supp. V 1993) (the Act), the taxpayer may elect to claim a deduction for that loss on the taxpayer's federal income tax return for the taxable year immediately preceding the taxable year in which the disaster occurred. For purposes of § 165(i), a disaster includes an event declared a major disaster or an emergency under the Act.

Section 1.165-11(e) of the Income Tax Regulations provides that the election to deduct a disaster loss for the preceding year must be made by filing a return, an amended return, or a claim for refund on or before the later of (1) the due date of the taxpayer's income tax return (determined without regard to any extension of time to file the return) for the taxable year in which the disaster actually occurred, or (2) the due date of the taxpayer's income tax return (determined with regard to any extension of time to file the return) for the taxable year immediately preceding the taxable year in which the disaster actually occurred.

The provisions of § 165(i) apply only to losses that are otherwise deductible under § 165(a). An individual taxpayer may deduct losses if they are incurred in a trade or business, if they are incurred in a transaction entered into for profit, or if they are casualty losses under § 165(c)(3).

The President has determined that during 2001 the areas listed below have been adversely affected by disasters of sufficient severity and magnitude to warrant assistance by the Federal Government under the Act.

A list of the areas warranting assistance under the Act is available at the Federal Emergency Management Agency Internet site at www.fema.gov. Accordingly, the Internal Revenue Service requests comments regarding the need for future publication of this revenue ruling. Comments should be submitted by May 1, 2002, either to:

Internal Revenue Service
P. O. Box 7604
Ben Franklin Station
Washington, DC 20044
Attn: CC:PA:T:CRU (ITA)
Room 5041

or electronically via the Service internet site at: Notice.Comments@irs.counsel.treas.gov (the Service comments e-mail address). All comments will be available for public inspection and copying.

FURTHER INFORMATION

For further information regarding this revenue ruling, contact James Roy at (202) 622-4950 (not a toll-free call).

| Disaster Area | Disaster Description | Disaster Date |
|--|---|-----------------------------|
| Alabama | | |
| Counties of Blount, Fayette, Jefferson, Lamar, Tuscaloosa, and Walker | FEMA-1362-DR Severe storms and flooding | February 16-17 |
| Counties of Autauga, Blount, Butler, Calhoun, Cherokee, Clay, Dale, DeKalb, Etowah, Fayette, Jefferson, Lamar, Lawrence, Madison, Marion, Marshall, St. Clair, Talladega, and Winston | FEMA-1399-DR Severe storms and tornadoes | November 24- December 12 |
| Arkansas | | |
| Counties of Bradley, Clark, Cleveland, Columbia, Conway, Craighead, Dallas, Drew, Franklin, Hempstead, Hot Spring, Lafayette, Lincoln, Little River, Miller, Nevada, Newton, Ouachita, Polk, Prairie, Union, and White | FEMA-1363-DR Severe storms and flooding | February 14-March 21 |

| Disaster Area | Disaster Description | Disaster Date |
|--|--|---------------------------------------|
| Colorado | | |
| Counties of Baca, Bent, Cheyenne, Crowley, Kiowa, Lincoln, Logan, Morgan, Phillips, Prowers, Sedgwick, Washington, Weld, and Yuma | FEMA-1374-DR Severe storms | April 11–22 |
| District of Columbia | | |
| All | FEMA-1389-DR Flooding | August 10–12 |
| Florida | | |
| Counties of Alachua, Baker, Bradford, Brevard, Broward, Charlotte, Citrus, Clay, Collier, Columbia, DeSoto, Dixie, Duval, Flagler, Gilchrist, Glades, Hamilton, Hardee, Hendry, Hernando, Highlands, Hillsborough, Indian River, Lafayette, Lake, Lee, Levy, Manatee, Marion, Martin, Miami-Dade, Monroe, Nassau, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, Sarasota, Seminole, St. Johns, St. Lucie, Sumter, Suwannee, Union, and Volusia | FEMA-1359-DR Severe freeze | December 1, 2000– January 25, 2001 |
| Counties of Bay, Calhoun, Gadsden, Holmes, Jefferson, Leon, Liberty, Wakulla, and Washington | FEMA-1381-DR Tropical Storm Allison | June 11–15 |
| Counties of Charlotte, Collier, DeSoto, Flagler, Hardee, Highlands, Lee, Manatee, Putnam, St. Johns, and Sarasota | FEMA-1393-DR Tropical Storm Gabrielle | September 13–21 |
| Guam | | |
| All | FEMA-1397-DR Earthquake | October 13 |
| Illinois | | |
| Counties of Adams, Calhoun, Carroll, Hancock, Henderson, Jo Daviess, Mercer, Pike, Rock Island, and Whiteside | FEMA-1368-DR Flooding | April 18–May 29 |
| Iowa | | |
| Counties of Allamakee, Buchanan, Calhoun, Clayton, Clinton, Des Moines, Dubuque, Grundy, Henry, Humboldt, Jackson, Lee, Louisa, Lucas, Muscatine, Palo Alto, Pottawattamie, Ringgold, Sac, Scott, Union, Wapello, and Webster | FEMA-1367-DR Severe storms and flooding | April 8–May 29 |
| Kansas | | |
| County of Barton | FEMA-1366-DR Severe storms and tornado | April 21–May 1 |
| Kentucky | | |
| Counties of Bath, Clay, Elliot, Estill, Floyd, Harrison, Johnson, Knott, Lawrence, Letcher, Lewis, Livingston, Mason, Menifee, Perry, Pike, Powell, Rockcastle, Rowan, and Whitley | FEMA-1388-DR Severe storms and flooding | July 27–August 23 |

| Disaster Area | Disaster Description | Disaster Date |
|--|---|---------------------------------------|
| Louisiana | | |
| Parishes of Bienville, Bossier, Caddo, Claiborne, Lincoln, Ouachita, Union, and Webster | FEMA-1357-DR Severe winter storm | December 11, 2000– January 3, 2001 |
| Parishes of Ascension, Assumption, Beauregard, East Baton Rouge, East Feliciana Parish, Iberia, Iberville, Jefferson, Lafayette, Lafourche, Livingston, Orleans, Pointe Coupee, St. Bernard, St. Charles, Saint Helena, St. James, St. John the Baptist, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermillion, Washington, West Baton Rouge, and West Feliciana | FEMA-1380-DR Tropical Storm Allison | June 5–22 |
| Maine | | |
| Counties of Franklin, Kennebec, Oxford, Penobscot, Washington, and York | FEMA-1371-DR Severe storms and flooding | March 5–31 |
| Counties of Androscoggin, Aroostook, Cumberland, Franklin, Hancock, Lincoln, Oxford, Penobscot, Piscataquis, Sagadahoc, Somerset, Washington, and York | FEMA-3164–EM Severe winter storm | March 5–31 |
| Massachusetts | | |
| Counties of Berkshire, Essex, Franklin, Hampshire, Middlesex, Norfolk, and Worcester | FEMA-3165–EM Snowstorm | March 5–7 |
| Counties of Bristol, Essex, Middlesex, Norfolk, Plymouth, Suffolk, and Worcester | FEMA-1364-DR Severe storms and flooding | March 5–April 16 |
| Minnesota | | |
| Counties of Aitkin, Anoka, Beltrami, Benton, Big Stone, Brown, Carlton, Carver, Chippewa, Chisago, Clay, Clearwater, Crow Wing, Dakota, Dodge, Douglas, Faribault, Freeborn, Grant, Goodhue, Hennepin, Houston, Isanti, Kanabec, Kandiyohi, Kittson, Koochiching, Olmstead, Lac qui Parle, Lake of Woods, McLeod, Meeker, Mille Lacs, Morrison, Mower, Nicollet, Noble, Norman, Otter Tail, Pine, Polk, Ramsey, Red Lake, Redwood, Renville, Rice, Roseau, Scott, Sibley, St. Louis, Stearns, Stevens, Swift, Todd, Traverse, Wabasha, Washington, Wilkin, Winona, Wright, and Yellow Medicine; Fond du Lac Indian Reservation, Mille Lacs Indian Reservation, Red Lake Indian Reservation, and White Earth Indian Reservation; and Tribal Governments of Prairie Island and Upper Sioux | FEMA-1370-DR Flooding | March 23–July 3 |
| Mississippi | | |
| Counties of Amite, Alcorn, Attala, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Clay, Coahoma, Forrest, Franklin, Grenada, Holmes, Humphreys, Itawamba, Jones, Lafayette, Lamar, Lee, Leflore, Lincoln, Lowndes, Madison, Marion, Monroe, Neshoba, Noxubee, Oktibbeha, Panola, Pearl River, Perry, Pike, Pontotoc, Prentiss, Quitman, Scott, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Union, Walthall, Washington, Webster, Wilkinson, Winston, Yalobusha, and Yazoo | FEMA-1360-DR Tornadoes and severe storms | February 16 |

| Disaster Area | Disaster Description | Disaster Date |
|--|---|----------------------|
| Counties of Attala, Holmes, Leake, Lee, Neshoba, and Pontotoc | FEMA-1365-DR Severe storms and flooding | April 3–5 |
| Counties of George, Hancock, Harrison, Jackson, and Pearl River | FEMA-1382-DR Tropical Storm Allison | June 6–13 |
| Counties of Benton, Bolivar, Coahoma, DeSoto, Grenada, Hinds, Humphreys, Lafayette, Leake, Marshall, Madison, Panola, Prentiss, Quitman, Scott, Sunflower, Tallahatchie, Tate, Tippah, Tunica, and Washington | FEMA-1398-DR Severe storms and tornadoes | November 24–25 |
| Montana | | |
| County of Big Horn and Crow Indian Reservation | FEMA-1377-DR Severe storms | April 8–9 |
| Counties of Gallatin, Missoula, and Powell | FEMA-1385-DR Severe storms | June 3–14 |
| Nebraska | | |
| Counties of Banner, Blaine, Box Butte, Brown, Chase, Cherry, Cheyenne, Custer, Deuel, Dundy, Gage, Garden, Hayes, Hooker, Johnson, Keith, Keya Paha, Kimball, Lincoln, Logan, McPherson, Morrill, Nuckolls, Perkins, Rock, Saline, Sioux, and Thomas | FEMA-1373-DR Severe storms | April 10–23 |
| Dakota County | FEMA-1394-DR Severe storms and flooding | August 17–18 |
| New Hampshire | | |
| Counties of Cheshire, Coos, Grafton, Hillsborough, Merrimack, Rockingham, and Strafford | FEMA-3166–EM Snowstorm | March 5–7 |
| New Jersey | | |
| All counties | FEMA-3169–EM Terrorist attack | September 11 |
| New York | | |
| Counties of Albany, Allegany, Bronx, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Dutchess, Erie, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Kings, Lewis, Livingston, Madison, Monroe, Montgomery, Nassau, New York, Niagara, Oneida, Onondaga, Ontario, Orange, Orleans, Oswego, Otsego, Putnam, Queens, Rensselaer, Richmond, Rockland, Saratoga, Schenectady, Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Suffolk, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Westchester, Wyoming, and Yates | FEMA-1391-DR Terrorist attack | September 11 |

| Disaster Area | Disaster Description | Disaster Date |
|--|--|--|
| North Dakota | | |
| Counties of Adams, Barnes, Benson, Bottineau, Burleigh, Cass, Cavalier, Dickey, Eddy, Foster, Golden Valley, Grand Forks, Grant, Griggs, Kidder, La Moure, Logan, McHenry, McLean, Morton, Mountrail, Nelson, Pembina, Pierce, Ramsey, Ransom, Richland, Rolette, Sargent, Sheridan, Steele, Stutsman, Towner, Traill, Walsh, and Wells; and Indian Reservations of the Spirit Lake Tribe and of the Turtle Mountain Band of Chippewa | FEMA-1376-DR Floods | March 1–August 9 |
| Ohio | | |
| Counties of Brown, Butler, Clermont, and Hamilton | FEMA-1390-DR Severe storms and flooding | July 17–18 |
| Oklahoma | | |
| Counties of Adair, Atoka, Beckham, Blaine, Bryan, Caddo, Canadian, Carter, Cherokee, Choctaw, Cleveland, Coal, Comanche, Cotton, Craig, Creek, Custer, Delaware, Garfield, Garvin, Grady, Greer, Harmon, Haskell, Hughes, Jackson, Jefferson, Johnston, Kay, Kingfisher, Kiowa, Latimer, LeFlore, Lincoln, Logan, Love, Lowe, Marshall, Mayes, McClain, McCurtain, McIntosh, Murray, Muskogee, Nowata, Ofuskee, Oklahoma, Okmulgee, Osage, Ottawa, Pawnee, Payne, Pittsburg, Pontotoc, Pottawatomie, Pushmataha, Roger Mills, Rogers, Seminole, Sequoyah, Stephens, Tillman, Tulsa, Wagoner, Washington, and Washita | FEMA-1355-DR Severe winter storm | December 25, 2000– January 10, 2001 |
| Counties of Alfalfa, Atoka, Beaver, Beckham, Blaine, Bryan, Caddo, Canadian, Carter, Choctaw, Cimarron, Coal, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Garvin, Grady, Harper, Haskell, Jackson, Jefferson, Johnston, Kingfisher, Kiowa, Latimer, LeFlore, Love, Major, Marshall, McClain, McCurtain, Murray, Muskogee, Okfuskee, Oklahoma, Okmulgee, Payne, Pittsburg, Pushmataha, Roger Mills, Stephens, Texas, Tillman, Washita, and Woodward | FEMA-1384-DR Severe storms | May 27–30 |
| County of Washita | FEMA-1395-DR Severe storms and flooding | October 9–10 |
| Pennsylvania | | |
| Counties of Bucks and Montgomery | FEMA-1383-DR Tropical Storm Allison | June 15–17 |
| Puerto Rico | | |
| Municipalities of Adjuntas, Añasco, Cabo Rojo, Guánica, Guayanilla, Hormigueros, Lajas, Lares, Las Marias, Maricao, Moca, Rincon, Sabana Grande, San German, and Yauco | FEMA-1372-DR Flooding | May 6–11 |
| Municipalities of Aguas Buenas, Barranquitas, Bayamon, Ciales, Corozal, Jayuya, Juncos, Morovis, Naranjito, Orocovis, San Lorenzo, Utuado, and Vega Alta | FEMA-1396-DR Severe storms and flooding | November 7–9 |

| Disaster Area | Disaster Description | Disaster Date |
|---|--|--|
| South Dakota | | |
| Counties of Beadle, Brookings, Brown, Buffalo, Clark, Codington, Day, Deuel, Edmunds, Grant, Gregory, Hamlin, Hanson, Jerauld, Kingsbury, Marshall, Mellette, Moody, Roberts, Sanborn, Spink, Todd, Tripp, and Turner | FEMA-1375-DR Severe storms | March 1–April 30 |
| Tennessee | | |
| Counties of Carter, Cocke, Greene, Johnson, Shelby, Unicoi, and Washington | FEMA-1387-DR Severe storms and flooding | July 27–August 22 |
| Texas | | |
| Counties of Armstrong, Bailey, Bowie, Borden, Briscoe, Carson, Cass, Cherokee, Cooke, Crosby, Dawson, Deaf Smith, Delta, Fannin, Floyd, Franklin, Gains, Garza, Gray, Grayson, Gregg, Hall, Harrison, Hemphill, Hopkins, Hunt, Lamar, Lynn, Marion, Montague, Morris, Nacogdoches, Oldham, Panola, Parmer, Potter, Rains, Randall, Red River, Rusk, San Augustine, Shelby, Smith, Titus, Upshur, and Wood | FEMA-1356-DR Severe winter storm | December 12, 2000– January 15, 2001 |
| Counties of Anderson, Angelina, Brazoria, Cherokee, Chambers, Fort Bend, Galveston, Grimes, Hardin, Harris, Harrison, Houston, Jasper, Jefferson, Leon, Liberty, Madison, Montgomery, Nacogdoches, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Trinity, Tyler, Walker, and Waller | FEMA-1379-DR Severe storms and flooding | June 5–July 20 |
| Vermont | | |
| Counties of Addison, Bennington, Chittenden, Grand Isle, Lamoille, Orleans, Rutland, Windham, and Windsor | FEMA-3167–EM Snowstorm | March 5–7 |
| Virginia | | |
| Counties of Bath, Buchanan, Dickenson, Lee, Russell, Scott, Smyth, Tazewell, Washington, and Wise | FEMA-1386-DR Severe storms and flooding | July 8–August 27 |
| County of Arlington | FEMA-1392-DR Terrorist attack | September 11 |
| Washington | | |
| Counties of Benton, Chelan, Clallam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Kittitas, Lewis, Mason, Pacific, Pierce, Skagit, Skamania, Snohomish, Thurston, Wahkiakum, Whatcom, and Yakima | FEMA-1361-DR Earthquake | February 28–March 16 |
| West Virginia | | |
| Counties of Boone, Cabell, Calhoun, Clay, Doddridge, Fayette, Greenbrier, Kanawha, Lincoln, Logan, Marion, Mason, McDowell, Mercer, Mingo, Nicholas, Preston, Putnam, Raleigh, Roane, Summers, Taylor, Wayne, and Wyoming | FEMA-1378-DR Severe storms and flooding | May 15–September 4 |

Disaster Area**Disaster Description****Disaster Date****Wisconsin**

Counties of Adams, Ashland, Barron, Bayfield, Buffalo, Burnett, Calumet, Chippewa, Clark, Crawford, Douglas, Dunn, Grant, Iron, Jackson, Juneau, La Crosse, Outagamie, Pepin, Pierce, Polk, Portage, Rusk, St. Croix, Taylor, Trempealeau, Vernon, Washburn, Waupaca, Waushara, Winnebago, and Wood

FEMA-1369-DR
Flooding

April 10–July 6

Section 167.—Depreciation

If impact fees incurred by a taxpayer in connection with the new construction or expansion of a building are capitalized costs allocable to the building, are these fees depreciable under § 167(a) of the Internal Revenue Code? See Rev. Rul. 2002–9, on this page.

Section 168.—Accelerated Cost Recovery System

If impact fees incurred by a taxpayer in connection with the new construction or expansion of a building are capitalized costs allocable to the building, how are these fees depreciated under § 168 of the Internal Revenue Code? See Rev. Rul. 2002–9, on this page.

Section 263.—Capital Expenditures

26 CFR 1.263(a)–1: Capital expenditures; in general.

Are impact fees incurred by a taxpayer in connection with the construction of a new residential rental building capitalized costs allocable to the building under § 263(a) of the Internal Revenue Code? See Rev. Rul. 2002–9, on this page.

Section 263A.—Capitalization and Inclusion in Inventory Costs of Certain Expenses

26 CFR 1.263A–1: Uniform capitalization of costs. (Also §§ 42, 167, 168, 263, 446, 481; 1.263(a)–1.)

Impact fees. This ruling provides that impact fees incurred by a taxpayer in connection with the construction of a new residential rental building are capitalized costs allocable to the building.

Rev. Rul. 2002–9**ISSUE**

Are “impact fees” incurred by a taxpayer in connection with the construction of a new residential rental building capitalized costs allocable to the building under §§ 263(a) and 263A of the Internal Revenue Code?

FACTS

Taxpayer is in the business of developing, owning, and leasing residential rental property. Taxpayer purchased unimproved land located in County on which Taxpayer will construct a new residential building that it will rent to tenants. The development plan submitted by Taxpayer to County indicates that the building is expected to have x number of rental units. County imposes “impact fees” on new and expanded development.

Impact fees are one-time charges that are imposed by a state or local government against new development or expansion of existing development to finance specific offsite capital improvements for general public use that are necessitated by the new or expanded development. Generally, impact fees are refundable (in full or in part) if the new or expanded development ultimately is not constructed as planned.

Taxpayer was required by County to pay various impact fees (for example, for schools and law enforcement and fire protection facilities) in order to compensate County for the financial impact of Taxpayer’s new building. These impact fees were calculated based on Taxpayer’s projection of the number of rental units in, and on the size of, the building. Taxpayer paid the impact fees when the construction permit for the building was issued.

LAW AND ANALYSIS

Section 263(a) and § 1.263(a)–1(a) of the Income Tax Regulations provide that no deduction is allowed for any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate. Section 1.263(a)–2(a) provides that capital expenditures include the cost of acquisition, construction, or erection of buildings, machinery and equipment, furniture and fixtures, and similar property having a useful life substantially beyond the taxable year.

Section 263A provides, in part, that direct costs and a properly allocable portion of indirect costs of real or tangible personal property produced by a taxpayer must be capitalized to the property produced. See also § 1.263A–1(a)(3)(ii). Section 263A(g)(1) provides that the term “produce” includes construct, build, install, manufacture, develop, or improve. See also § 1.263A–2(a)(1)(i). Property produced may include land, buildings, land improvements, and other tangible property owned by the taxpayer for federal income tax purposes. See § 1.263A–2(a)(1)(ii). Section 1.263A–2(a)(3)(i) provides that any cost required to be capitalized by § 263A must be capitalized regardless of whether the cost was incurred before, during, or after production.

Section 1.263A–1(e) provides rules for determining the direct and indirect costs that are required to be capitalized to property produced. Section 1.263A–1(e)(2)(i) provides that direct costs consist of direct material and direct labor costs. Section 1.263A–1(e)(3)(i) defines indirect costs as all costs other than direct material costs and direct labor costs. Indirect costs are properly allocable to property produced when the costs directly benefit, or

are incurred by reason of, the performance of production activities. Indirect costs that are allocable to production activities then must be allocated among the properties produced. See § 1.263A-1(f).

In *Oriole Homes Corp. v. U.S.*, 705 F.Supp. 1531 (S.D. Fla. 1989), the court held that road, educational, regional park, and municipal park impact fees required for the approval and recordation of plats for subdivisions are capital expenditures, to be capitalized as a development cost and deducted *pro rata* as each house is sold. In reaching its holding, the court stated that “the impact fees increased the value of the subdivisions and secured a benefit which lasted beyond the taxable year in which they were incurred.” Similarly, the impact fees incurred by Taxpayer resulted in a permanent improvement or betterment to Taxpayer’s development project. Accordingly, consistent with *Oriole Homes*, the impact fees incurred by Taxpayer must be capitalized to the property produced under § 263(a).

Moreover, because Taxpayer’s development project constitutes production of property within the meaning of § 263A(g)(1), Taxpayer is required to capitalize under § 263A the direct costs and a proper share of the allocable indirect costs associated with the development. In *Von-Lusk v. Commissioner*, 104 T.C. 207 (1995), the court held that certain expenses incurred by a real estate developer before actual physical work began on undeveloped land are subject to § 263A. The court found that the developer’s activities, such as obtaining building permits and zoning variances, negotiating permit fees, and similar activities, represent the “first steps in the development of the property.” The court further noted that the pursuit of building permits and zoning variances, negotiating permit fees, and similar activities “are ancillary to actual physical work on the land and are as much a part of a development project as digging a foundation or completing a structure’s frame. The project cannot move forward if these steps are not taken.”

The impact fees incurred by Taxpayer are not direct costs within the meaning of § 263A because they are neither direct material nor direct labor costs. However, the impact fees are indirect costs under

§ 263A because they directly benefit, and are incurred by reason of, Taxpayer’s production activity. Similar to the costs at issue in *Von-Lusk*, the impact fees were assessed by County because of Taxpayer’s plans to construct the new residential building, and thus are “as much a part of a development project as digging a foundation or completing a structure’s frame.” Thus, in accordance with § 1.263A-1(f), Taxpayer must allocate the impact fees to the property produced based on all the facts and circumstances. Because the impact fees are assessed as a result of Taxpayer’s plans to construct the building, the amount of the impact fees is calculated based upon the characteristics of the building, and the impact fees generally would be refundable if Taxpayer decides not to construct the building as planned, the impact fees are allocable to the building. Accordingly, the impact fees must be capitalized under § 263A as indirect costs allocable to the new residential rental building.

HOLDING

“Impact fees” incurred by a taxpayer in connection with the construction of a new residential rental building are capitalized costs allocable to the building under §§ 263(a) and 263A.

APPLICATION

Any change in a taxpayer’s treatment of impact fees incurred in connection with the new construction or expansion of a building to conform with this revenue ruling is a change in method of accounting to which the provisions of §§ 446 and 481 and the regulations thereunder apply.

A taxpayer wanting to change the method of accounting for impact fees to conform with this revenue ruling must follow the automatic change in method of accounting provisions in Rev. Proc. 2002-9 (2002-3 I.R.B. 327) (or its successor), as modified and clarified by Announcement 2002-17 (2002-8 I.R.B. 561), with the following modifications:

(1) If the taxpayer changes its method of accounting for impact fees to conform with this revenue ruling for the first taxable year ending on or after December 31, 2001, the scope limitations in section 4.02 of Rev. Proc. 2002-9 do not apply; and

(2) To assist the Internal Revenue Service in processing changes in method of accounting under this revenue ruling, and to ensure proper handling, section 6.02(4)(a) of Rev. Proc. 2002-9 is modified to require that a Form 3115 filed under this revenue ruling include the statement “Automatic Change Filed Under Rev. Rul. 2002-9.” This statement should be legibly printed or typed on the appropriate line on the Form 3115.

If a taxpayer changes its method of accounting for impact fees to conform with this revenue ruling, the treatment of impact fees will not be raised as an issue in any taxable year before the year of change, consistent with the audit protection provision of section 7.01 of Rev. Proc. 2002-9. If this change in method of accounting is made for the taxpayer’s first taxable year ending on or after December 31, 2001, and the treatment of impact fees has already been raised as an issue in a taxable year before the taxpayer’s first taxable year ending on or after December 31, 2001, the treatment of impact fees will not be further pursued.

If a depreciation deduction is allowable under § 167(a) for the building and it is subject to § 168, the taxpayer must depreciate the impact fees under § 168 as residential rental property or nonresidential real property (as both are defined in § 168(e)(2)), as appropriate, beginning when the newly constructed building or the expansion of the building is placed in service by the taxpayer. Moreover, for purposes of § 42, impact fees are included in the eligible basis of a qualified low-income building. A change in method of accounting for impact fees to conform to this revenue ruling does not affect the amount of credit that has been allocated under § 42(h)(1) or allowed for buildings financed with tax-exempt bonds subject to the volume cap as determined under § 42(h)(4).

EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2002-9 is modified and amplified to include this accounting method change in section 4 of the APPENDIX.

DRAFTING INFORMATION

The principal authors of this revenue ruling are Kathleen Reed and Christopher

J. Wilson of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding § 42, 167, or 168, contact Gregory Doran at (202) 622-3040 or Mr. Wilson at (808) 539-2874. For further information regarding § 263(a) or 263A, contact Cheryl L. Oseekey at (202) 622-4970. These are not toll-free calls.

Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of March 2002. See Rev. Rul. 2002-10, on this page.

Section 382.—Limitation on Net Operating Loss Carryforwards and Certain Built-In Losses Following Ownership Change

The adjusted applicable federal long-term rate is set forth for the month of March 2002. See Rev. Rul. 2002-10, on this page.

Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 2002. See Rev. Rul. 2002-10, on this page.

Section 446.—General Rule for Methods of Accounting

If a taxpayer changes its treatment of impact fees incurred in connection with the new construction or expansion of a building, is this change a change in method of accounting under § 446(e) of the Internal Revenue Code? See Rev. Rul. 2002-9, page 614.

Section 467.—Certain Payments for the Use of Property or Services

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 2002. See Rev. Rul. 2002-10, on this page.

Section 468.—Special Rules for Mining and Solid Waste Reclamation and Closing Costs

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 2002. See Rev. Rul. 2002-10, on this page.

Section 481.—Adjustments Required by Changes in Method of Accounting

If a taxpayer changes its treatment of impact fees incurred in connection with the new construction or expansion of a building, is an adjustment under § 481 of the Internal Revenue Code taken into account in computing taxable income? See Rev. Rul. 2002-9, page 614.

Section 482.—Allocation of Income and Deductions Among Taxpayers

Federal short-term, mid-term, and long-term rates are set forth for the month of March 2002. See Rev. Rul. 2002-10, on this page.

Section 483.—Interest on Certain Deferred Payments

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 2002. See Rev. Rul. 2002-10, on this page.

Section 642.—Special Rules for Credits and Deductions

Federal short-term, mid-term, and long-term rates are set forth for the month of March 2002. See Rev. Rul. 2002-10, on this page.

Section 807.—Rules for Certain Reserves

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 2002. See Rev. Rul. 2002-10, on this page.

Section 846.—Discounted Unpaid Losses Defined

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 2002. See Rev. Rul. 2002-10, on this page.

Section 1274.—Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property

(Also sections 42, 280G, 382, 412, 467, 468, 482, 483, 642, 807, 846, 1288, 7520, 7872.)

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 1274, 1288, and other sections of the Code, tables set forth the rates for March 2002.

Rev. Rul. 2002-10

This revenue ruling provides various prescribed rates for federal income tax purposes for March 2002 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(2) for buildings placed in service during the current month. Finally, Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520.

REV. RUL. 2002-10 TABLE 1

Applicable Federal Rates (AFR) for March 2002

Period for Compounding

| | <i>Annual</i> | <i>Semiannual</i> | <i>Quarterly</i> | <i>Monthly</i> |
|-------------------|---------------|-------------------|------------------|----------------|
| <i>Short-Term</i> | | | | |
| AFR | 2.69% | 2.67% | 2.66% | 2.66% |
| 110% AFR | 2.96% | 2.94% | 2.93% | 2.92% |
| 120% AFR | 3.23% | 3.20% | 3.19% | 3.18% |
| 130% AFR | 3.50% | 3.47% | 3.46% | 3.45% |
| <i>Mid-Term</i> | | | | |
| AFR | 4.52% | 4.47% | 4.45% | 4.43% |
| 110% AFR | 4.98% | 4.92% | 4.89% | 4.87% |
| 120% AFR | 5.43% | 5.36% | 5.32% | 5.30% |
| 130% AFR | 5.89% | 5.81% | 5.77% | 5.74% |
| 150% AFR | 6.82% | 6.71% | 6.65% | 6.62% |
| 175% AFR | 7.97% | 7.82% | 7.75% | 7.70% |
| <i>Long-Term</i> | | | | |
| AFR | 5.48% | 5.41% | 5.37% | 5.35% |
| 110% AFR | 6.04% | 5.95% | 5.91% | 5.88% |
| 120% AFR | 6.60% | 6.49% | 6.44% | 6.40% |
| 130% AFR | 7.15% | 7.03% | 6.97% | 6.93% |

REV. RUL. 2002-10 TABLE 2

Adjusted AFR for March 2002

Period for Compounding

| | <i>Annual</i> | <i>Semiannual</i> | <i>Quarterly</i> | <i>Monthly</i> |
|----------------------------|---------------|-------------------|------------------|----------------|
| Short-term adjusted AFR | 2.07% | 2.06% | 2.05% | 2.05% |
| Mid-term adjusted AFR | 3.57% | 3.54% | 3.52% | 3.51% |
| Long-term adjusted AFR | 4.86% | 4.80% | 4.77% | 4.75% |

REV. RUL. 2002-10 TABLE 3

Rates Under Section 382 for March 2002

| | |
|--|-------|
| Adjusted federal long-term rate for the current month | 4.86% |
| Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.) | 5.01% |

REV. RUL. 2002-10 TABLE 4

Appropriate Percentages Under Section 42(b)(2) for March 2002

| | |
|--|-------|
| Appropriate percentage for the 70% present value low-income housing credit | 8.17% |
| Appropriate percentage for the 30% present value low-income housing credit | 3.50% |

REV. RUL. 2002-10 TABLE 5

Rate Under Section 7520 for March 2002

| | |
|---|------|
| Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest | 5.4% |
|---|------|

Section 1288.—Treatment of Original Issue Discounts on Tax-Exempt Obligations

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 2002. See Rev. Rul. 2002-10, page 616.

Section 7520.—Valuation Tables

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 2002. See Rev. Rul. 2002-10, page 616.

Section 7872.—Treatment of Loans with Below-Market Interest Rates

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of March 2002. See Rev. Rul. 2002-10, page 616.

Part III. Administrative, Procedural, and Miscellaneous

Differential Earnings Rate for Mutual Life Insurance Companies

Notice 2002-19

This notice publishes a tentative determination under § 809 of the Internal Revenue Code of the “differential earnings rate” for 2001 and the rate that is used to calculate the “recomputed differential earnings amount” for 2000. (The latter rate is referred to in this notice as the “recomputed differential earnings rate” for 2000.) These rates are used by mutual life insurance companies to calculate their federal income tax liability for taxable years beginning in 2001.

BACKGROUND

Section 809(a) provides that, in the case of any mutual life insurance company, the amount of the deduction allowable under § 808 for policyholder dividends is reduced (but not below zero) by the “differential earnings amount.” Any excess of the differential earnings amount over the amount of the deduction allowable under § 808 is taken into account as a reduction in the closing balance of reserves under subsections (a) and (b) of § 807. The “differential earnings amount” for any taxable year is the amount equal to the product of (a) the life insurance company’s average equity base for the taxable year multiplied by (b) the “differential earnings rate” for that taxable year. The “differential earnings rate” for the taxable year is the excess of (a) the “imputed earnings rate” for the taxable year over (b) the “average mutual earnings rate” for the second calendar year preceding the calendar year in which the taxable year begins. The “imputed earnings rate” for any taxable year is the amount that bears the same ratio to 16.5 percent as the “current stock earnings rate” for the taxable year bears to the “base period stock earnings rate.”

Section 809(f) provides that, in the case of any mutual life insurance company, if the “recomputed differential earnings amount” for any taxable year exceeds the differential earnings amount for that taxable year, the excess is

included in life insurance gross income for the succeeding taxable year. If the differential earnings amount for any taxable year exceeds the recomputed differential earnings amount for that taxable year, the excess is allowed as a life insurance deduction for the succeeding taxable year. The “recomputed differential earnings amount” for any taxable year is an amount calculated in the same manner as the differential earnings amount for that taxable year, except that the average mutual earnings rate for the calendar year in which the taxable year begins is substituted for the average mutual earnings rate for the second calendar year preceding the calendar year in which the taxable year begins.

The stock earnings rates and mutual earnings rates taken into account under § 809 generally are determined by dividing statement gain from operations by the average equity base. For this purpose, the term “statement gain from operations” means “the net gain or loss from operations required to be set forth in the annual statement, determined without regard to Federal income taxes, and... properly adjusted for realized capital gains and losses....” See § 809(g)(1). The term “equity base” is defined as an amount determined in the manner prescribed by regulations equal to surplus and capital increased by the amount of nonadmitted financial assets, the excess of statutory reserves over the amount of tax reserves, the sum of certain other reserves, and 50 percent of any policyholder dividends (or other similar liability) payable in the following taxable year. See § 809(b)(2), (3), (4), (5), and (6). Section 1.809-10 of the Income Tax Regulations provides that the equity base includes both the asset valuation reserve and the interest maintenance reserve for taxable years ending after December 31, 1991.

Section 1.809-9(a) of the regulations provides that neither the differential earnings rate under § 809(c) nor the recomputed differential earnings rate that is used in computing the recomputed differential earnings amount under § 809(f)(3) may be less than zero.

Rev. Rul. 99-3 (1999-1 C.B. 313) provides that a life insurance subsidiary of a mutual holding company is not a mutual

life insurance company for which the deduction for policyholder dividends is reduced pursuant to §§ 808(c)(2) and 809.

As described above, the differential earnings rate for 2001 and the recomputed differential earnings rate for 2000 affect the income and deductions reported by mutual life insurance companies on their federal income tax returns for the 2001 taxable year.

Data necessary to determine the tentative differential earnings rate for 2001 and the tentative recomputed differential earnings rate for 2000 have been compiled from returns filed by mutual life insurance companies and certain stock life insurance companies. The Internal Revenue Service is currently examining these returns. This examination will not be completed before the March 15, 2002, due date for filing 2001 calendar year returns.

NOTICE OF TENTATIVE RATES

This notice publishes a tentative determination of the differential earnings rate for 2001 and of the recomputed differential earnings rate for 2000. This notice also publishes a tentative determination of the rates on which the calculation of the differential earnings rate for 2001 and the recomputed differential earnings rate for 2000 are based. The final determination of these rates is expected to be published before September 1, 2002.

The tentative determination of the differential earnings rate for 2001 and the tentative determination of the recomputed differential earnings rate for 2000 that are published in this notice should be used by mutual life insurance companies to calculate the amount of tax liability for taxable years beginning in 2001 (in the case of companies that file returns before publication of the final determination of these rates) or to calculate the amount of estimated unpaid tax liability for taxable years beginning in 2001 (in the case of companies that are allowed an extension of time to file returns). Companies that file returns before publication of the final determination of these rates should file amended returns after the final determination of these rates is published. If there is a failure to pay tax for a taxable year

beginning in 2001 and the failure is attributable to a difference between (a) the tentative determination of the differential earnings rate for 2001 and recom-

puted differential earnings rate for 2000 and (b) the final determination of these rates, then any such failure through September 16, 2002, will be treated as due to

reasonable cause and will not give rise to any addition to tax under § 6651.

The tentative determination of the rates is set forth in Table 1.

Notice 2002-19

Table 1

Tentative Determination of Rates To Be Used For Taxable Years Beginning in 2001

| | |
|--|--------|
| Differential earnings rate for 2001 | 0 |
| Recomputed differential earnings rate for 2000 | 0 |
| Imputed earnings rate for 2000 | 15.358 |
| Imputed earnings rate for 2001 | 12.540 |
| Base period stock earnings rate | 18.221 |
| Current stock earnings rate for 2001 | 13.848 |
| Stock earnings rate for 1998 | 15.836 |
| Stock earnings rate for 1999 | 15.724 |
| Stock earnings rate for 2000 | 9.983 |
| Average mutual earnings rate for 1999 | 16.164 |
| Average mutual earnings rate for 2000 | 15.788 |

DRAFTING INFORMATION

The principal author of this notice is Katherine A. Hossofsky of the Office of the Associate Chief Counsel (Financial Institutions and Products). For further information regarding this notice, contact Ms. Hossofsky at (202) 622-3477 (not a toll-free call).

Part IV. Items of General Interest

Frequent Flyer Miles Attributable to Business or Official Travel

Announcement 2002-18

Most major airlines offer frequent flyer programs under which passengers accumulate miles for each flight. Individuals may also earn frequent flyer miles or other promotional benefits, for example, through rental cars or hotels. These promotional benefits may generally be exchanged for upgraded seating, free travel, discounted travel, travel-related services, or other services or benefits.

Questions have been raised concerning the taxability of frequent flyer miles or other promotional items that are received as the result of business travel and used for personal purposes. There are numerous technical and administrative issues relating to these benefits on which no official guidance has been provided, including issues relating to the timing and valuation of income inclusions and the basis for identifying personal use benefits attributable to business (or official) expenditures versus those attributable to personal expenditures. Because of these unresolved issues, the IRS has not pursued a tax enforcement program with respect to promotional benefits such as frequent flyer miles.

Consistent with prior practice, the IRS will not assert that any taxpayer has understated his federal tax liability by reason of the receipt or personal use of frequent flyer miles or other in-kind promotional benefits attributable to the taxpayer's business or official travel. Any future guidance on the taxability of these benefits will be applied prospectively.

This relief does not apply to travel or other promotional benefits that are converted to cash, to compensation that is paid in the form of travel or other promotional benefits, or in other circumstances where these benefits are used for tax avoidance purposes.

For information regarding this announcement, call (202) 622-4606 (not a toll-free number). Alternatively, taxpayers may transmit comments electronically via the following e-mail address:

Notice.Comments@irs.counsel.treas.gov.
Please include "Announcement 2002-18" in the subject line of any electronic communications.

Foundations Status of Certain Organizations

Announcement 2002-25

The following organizations have failed to establish or have been unable to maintain their status as public charities or as operating foundations. Accordingly, grantors and contributors may not, after this date, rely on previous rulings or designations in the Cumulative List of Organizations (Publication 78), or on the presumption arising from the filing of notices under section 508(b) of the Code. This listing does *not* indicate that the organizations have lost their status as organizations described in section 501(c)(3), eligible to receive deductible contributions.

Former Public Charities. The following organizations (which have been treated as organizations that are not private foundations described in section 509(a) of the Code) are now classified as private foundations:

100 Black Men of Central Florida, Inc.,
Daytona Beach, FL
AADEM, Inc., McAllen, TX
Action for Affordable Housing,
Greenwood Village, CO
African Americans Taking Action AIDS
Council, Inc., Waterloo, IA
Alternatives Living, Inc.,
New Orleans, LA
AM Envirotraining, Inc.,
San Antonio, TX
American-Arab Media Foundation, Inc.,
Wellesley, MA
American Committee for the David
Shapell College of Jewish Studies,
Brooklyn, NY
American Echo Chinese Institute,
Walnut, CA
American Foundation for the
Development of Nicaragua, Inc.,
Miami, FL
American Leadership Foundation,
Ruckersville, VA

American Literacy Network, Inc.,
Tarrytown, NY
American Methadone Treatment
Association, New York, NY
American Micro Institute, Inc.,
West Terre Haute, IN
American Museum of Entrepreneurs,
Inc., West Palm Beach, FL
Angel Land Child Care & Parent
Centers, Detroit, MI
Animals Museum, Venice, CA
Anne Walker Scholarship Fund,
New York, NY
Arlington Development Corporation,
Akron, OH
Art Spirit, Inc., New York, NY
Assisted Reproduction Foundation, Inc.,
Bedford, MA
Awareness Plus, Sherman Oaks, CA
Barbara Chasan Center for Creative
Approaches to Social Change,
Ames, IA
Berkeley Community Homes,
Oakland, CA
Bernard E. Shultz Foundation, Inc.,
Silver Spring, MD
BFI Human Services Foundation, Inc.,
Sacramento, CA
Bikeways Maui, Inc., Hana, HI
Blue Skunk Society, Inc., Mankato, MN
Bridges of DC, Inc., Washington, DC
Broken Tree One Room Cosmos School
House Research Initiative, Inc.,
Kintnersville, PA
Building Blocks Non-Profit Housing
Corporation, Royal Oak, MI
Bushwick United Community Service
Council, Inc., Brooklyn, NY
Cal Community Housing, Oakland, CA
California Association of American
Physicians & Surgeons Educational,
Torrance, CA
California Street Corporation,
Needham, MA
Californians Against Fraud,
San Francisco, CA
Carolyn Brown Reading Academy,
Bellevue, WA
Cedarmore Corporation, Freeport, NY
Center for National & International
Community Management,
Wilberforce, OH
Center on Deafness Inland Empire, Inc.,
Los Angeles, CA

Charleston Community and Family Development Corporation, Charleston, WV
 Chicago Pet Museum, Chicago, IL
 Children of the Son, Cotopaxi, CO
 Christ, Inc., Rockford, IL
 Christian Research and Resource Center, Raleigh, NC
 Citizens Against Domestic Violence, Inc., New York, NY
 Clarkston Community Museum Foundation, Inc., Clarkston, MI
 Coalition for a Healthy and Responsible Georgia, Smyrna, GA
 Community Coalition to Restructure P S 76, Inc., Brooklyn, NY
 Community Youth Services, Jackson, MS
 Concerned Citizens Commission on Pornography and Obscenity, Hesperia, CA
 Contemporary Art for America, New York, NY
 Creative Decisions Foundation, Pittsburgh, PA
 Cutler-Orosi Seniors, Cutler, PA
 Desai Charitable Foundation, Inc., Wayne, NJ
 Development Partners for Eastern Europe, Inc., Quincy, MA
 Diamond Community Development Group, Portage, MI
 Discover Education Corporation, Tulsa, OK
 Disowned Children of America Foundation, Union City, GA
 DMH-Ohio, Inc., San Diego, CA
 Don's Big Picture Ministries, Inc., South Chicago Heights, IL
 Education for Alternative Economics, Philadelphia, PA
 Eisenhower Durr Ministries, Inc., Magee, MS
 Epsilon Education Foundation, Washington, DC
 Ethnographic and Environmental Science Institute, Berkeley, CA
 Experience G.R.A.C.E. Foundation, Plymouth, MN
 Family Options Resource Center, Laguna Beach, CA
 Family Restoration Centers, Los Angeles, CA
 Film Source, Inc., Bethesda, MD
 Fort Rucker Community Foundation, Fort Rucker, AL
 Fowler Middle School, Tigard, OR
 Franklin H E L P Center, Inc., Hawthorne, FL

Franklin-Southampton Literacy Council, Franklin, VA
 Friends of White Park Trust, Concord, NH
 Full Armor Ministries, Inc., Eveleth, MN
 Georgia Somali Community, Inc., Stone Mountain, GA
 Gillis Benevolent Tr, Waycross, GA
 Grant Elementary PTA 10-9-95, Tacoma, WA
 Greccio-Mountain Knolls Housing, Inc., Colorado Springs, CO
 Green Mountain Coffee Roasters Foundation, Waterbury, VT
 Happy Organization, New York, NY
 Health Care Education Institute, Inc., Columbia, MD
 Helping Hands of Cleveland, Inc., Cleveland, OH
 Hill Top Personal Care Home, Inc., Decatur, GA
 Holley Martlew Archaeological Foundation, Philadelphia, Pa
 Hosanna in the Highest, Inc., Charleston, SC
 Ighodaro Foundation, Bern, Switzerland
 Imagination Foundation, Mill Valley, CA
 Institute for Community Development and Transition, Inc., McPherson, KS
 J. Shammah International Foundation, San Jose, CA
 Jewish Registry, Inc., Riverdale, NY
 John J. Wagner Ministries, Inc., Cooper City, FL
 Kan Research Institute, Corrales, NM
 Cathedral Community Development, Inc., Tampa, FL
 Kiddy's Little Den, Lake Charles, LA
 Kingfisher Flat Foundation, Santa Cruz, CA
 La Mesita Foundation, Inc., Meza, AZ
 Lasco Foundation, Inc., Tacoma, WA
 Leadership Paradigms, Inc., Rochester Hills, MI
 Legal Services for the Elderly, Inc., New York, NY
 Life Skills Learning Center of Woodland, Inc., Woodland, CA
 Lone Peak Institute, Orem, UT
 Louis Lotstein Library Fund, Inc., Stamford, CT
 Louisville Association of Music Performers, Inc., Louisville, KY
 Love Outreach Training Center, Incorporated, Morris, IL
 McCrary Economic Development, Inc., Belle Glade, FL

Mel Farr Scholarship Foundation, Oak Park, MI
 Mid-Michigan Cooperating Educational Fund, East Lansing, MI
 Model-As, Inc., Palm Beach, FL
 Mother of the Year, Dallas, TX
 Multidimensional Lifespan Institute, Providence, RI
 Muslim Youth & Young Adult Organization, Inc., Omaha, NE
 Mustard Seed Korean Community Service Center, Inc., Palisades Park, NJ
 MWP Funds, Farmington Hills, MI
 NA Keiki Hoa Hanau, Mililani, HI
 National Center for the Performing Arts, Compton, CA
 National Charitable Partners, Inc., Washington, DC
 National Issues Forum Institute, Dayton, OH
 National Network for Women in Prison, San Francisco, CA
 Neighbors United, Inc., River Beach, FL
 New Life Transformation Christian Homes, Los Angeles, CA
 New St. Paul Community Outreach Development, Inc., Cincinnati, OH
 New Visions Social & Clinical Services, Inc., Milwaukee, WI
 Newport Municipal Charitable Improvement Fund, Inc., Newport, RI
 Normanstone Foundation, Washington, DC
 Nosotros Political Leadership and Educational Institute, Salt Lake City, UT
 Ocular HIV Study Group, Inc., New York, NY
 Old Dominion Telecine Productions, Inc., Arlington, VA
 One Billion in One, Inc., Missouri City, TX
 Operation Outreach, Detroit, MI
 Operation Shield, Inc., Fords, NJ
 Orange County Deaf Equal Access Foundation, Inc., Los Angeles, CA
 Our Happy Homes, Inc., Houston, TX
 Panhandle Land Conservancy, Inc., Cornwall, NY
 Parsons Community Service Fund, Inc., Parsons, KS
 Phi Chapter of Tau Kappa Epsilon Educational Foundation, Inc., Columbus, NE
 Phifer Adolescent Treatment Center, San Leandro, CA

Phoenix Housing Corporation,
Washington, DC
Piedmont Housing Solutions
Corporation, York, SC
Presland, Inc., Grass Valley, CA
Quality AFC Home, Inc.,
Pontiac, MI
RAQC Clean Air Fund, Denver, CO
Reach One Teach One of America,
Tuskegee, AL
Reaching Out Ministries, Inc.,
Fayetteville, NC
Recovery King Sanctuary of God,
Philadelphia, PA
Restore to Hope, Bloomington, CA
Robert Thomas Affordable Housing
Corporation, Lorain, OH
Rose Park Community Council,
Salt Lake City, UT
Rotary Club of Winters Community
Foundation, Winters, CA
San Francisco Episcopal High School,
Inc., San Francisco, CA
Science and Spirit Resources, Inc.,
Geneva, IL
Seed the World, Inc., Grand Rapids, MI
Sheltering A Nation II, Inc., Austin, TX
Sheridan Place 1 Tenant Council,
Detroit, MI
Sierra Community Access Television,
Inc., Placerville, CA
Signature Ministries, Inc., Dallas, TX
Sola Scripta Project, La Quinta, CA
Southern California BIA Educational
Foundation, Diamond Bar, CA

St. Paul Economic Development, Inc.,
Riviera Beach, FL
Stand By Me, Inc., Waterbury, CT
Statistical Patient Input, Inc.,
Norfolk, CT
Stephanie Silverman Dance Fund,
New York, NY
Student Scientific Discovery Foundation,
Chicago, IL
SVC Excel Housing Development Fund
Corp., New York, NY
Synergy Works, Inc., Stone Ridge, NY
Talent Alliance Charitable Foundation,
Morristown, NJ
Tallahassee Area FPA, Inc.,
Tallahassee, FL
Tau Delta Phi Scholarship Fund, Inc.,
Northfield, IL
Teens in Touch, Clarksville, TN
Tender Care Guest Home, Perris, CA
Three Parks Foundation, Seattle, WA
Trade Policy Institute, Burke, VA
Tri-County GLAD, Los Angeles, CA
Unilife Mission, Los Angeles, CA
United Men of Hollandale,
Hollandale, MS
United States Wittenberg Foundation,
Edina, MN
Urban Development & Technology
Center, Chicago, IL
Vietvets Family Project, Mill Valley, CA
Visions for Human Development,
Chicago, IL
Walnut Street Music Festival,
Springfield, MO

Welcome Home Ministries, Inc.,
Jacksonville, FL
West 49th, Inc., Rumley, MI
West Bend Clinic Foundation, Inc.,
West Bend, WI
Western Massachusetts Veterans of
Color, Inc., Springfield, MA
Westside Track Club, Inc.,
Louisville, KY
White Castle Economic Development
Corporation, White Castle, LA
Wilson Family Ballfield Foundation,
Gloucester, MA
World Orthopedic Research and
Development Foundation,
Scottsdale, AZ
Youth Empowerment Services,
Los Angeles, CA

If an organization listed above submits information that warrants the renewal of its classification as a public charity or as a private operating foundation, the Internal Revenue Service will issue a ruling or determination letter with the revised classification as to foundation status. Grantors and contributors may thereafter rely upon such ruling or determination letter as provided in section 1.509(a)-7 of the Income Tax Regulations. It is not the practice of the Service to announce such revised classification of foundation status in the Internal Revenue Bulletin.

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it

applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in law or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in the new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the

new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.

E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
FR—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign Corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.

PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statements of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2001–27 through 2001–53 is in Internal Revenue Bulletin 2002–1, dated January 7, 2002.

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² A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2001–27 through 2001–53 is in Internal Revenue Bulletin 2002–1, dated January 7, 2002.